

J.R.T.S. Limited, Inc., Employer and United Transportation Union, Petitioner. Case 12-RC-8129

June 30, 1998

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HURTGEN

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

The National Labor Relations Board, by a three-member panel, has considered objections to a mixed mail and manual election held from August 8 to September 3, 1997, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 88 for and 54 against the Petitioner, with 11 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations, and finds that a certification of representative should be issued.¹

¹ In adopting the hearing officer's finding that the Union's payments to its election observers did not constitute objectionable conduct, we rely on the absence of any evidence that any employees other than the two observers learned of the payments before casting their ballots. Given the margin of the Union's victory in the election, the payments to the observers could not have affected the election outcome. This case is therefore distinguishable from precedents relied on by the Employer. See *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995) (excess transportation payments objectionable where offered to all unit employees and linked to employer's anti-union message); *S & C Security*, 271 NLRB 1300 (1984) (payment to observer objectionable where a shift of his vote could have affected outcome of election that union won 26-24); *Easco Tools*, 248 NLRB 700 (1980) (payments to two observers objectionable where union won 13-11).

In adopting the hearing officer's finding that union agents' conversations with employees during the mail balloting period did not constitute "speeches" to "massed assemblies of employees" objectionable under the rule of *Peerless Plywood Co.*, 107 NLRB 427 (1953), we need not rely on the hearing officer's additional statement that no evidence was introduced showing that the parties had been given notice of the effective date of the mail balloting.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the United Transportation Union and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time bus drivers employed by the Employer out of its Brandon, Florida headquarters, excluding all other employees, guards and supervisors as defined in the Act.

MEMBER HURTGEN, concurring.

I agree with my colleagues that the payments to the observers were not objectionable.

I do not pass on whether the payments would have been objectionable if word of such payments had spread to a determinative number of employees prior to the election. However, I wish to state that I do not agree with the suggestion in *Quick Shop Markets*, 200 NLRB 830 (1972), that a party's payment to an observer-unit employee is objectionable if it is "grossly disproportionate" to that person's regular rate of pay. Rather, I think that the test should be whether the payor-party has a reasonable and rational policy regarding such payments. If it did, I would find no objectionable conduct, even if the payment is substantially more than the employee regularly makes. As the Board conceded in *Quick Shop*: "Because an observer is not, as an observer, doing what he usually does, there is no logical basis for saying the two jobs must be paid at the same rate." I would only add that there is no reason to even compare the two rates.

I also concur with respect to the dismissal of the Employer's Objection 3. However, I note that the hearing officer seemingly presumed—in the absence of evidence to the contrary—that the Region did not give the parties notice of the effective dates of the mail balloting. Contrary to the hearing officer, I would presume that normal procedures were followed (i.e., notices were given), unless a party establishes the contrary. Having presumed that the proper notices were sent, I nonetheless agree that the Employer's Objection 3 should be overruled.